

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE: PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

MDL No. 1456

Civil Action No. 01-CV-12257-PBS

Hon. Patti B. Saris

THIS DOCUMENT RELATES TO:  
International Union of Operating Engineers,  
Local No. 68 Welfare Fund v. AstraZeneca PLC  
Et al. Civil Action No. 04-11503-PBS

MOTION TO QUASH

Defendant, Stanley C. Hopkins, moves this court to quash Co-Defendant AstraZeneca's First Request for Production of Documents, as well as its Notice of Subpoena ad Testificandum and Duces Tecum for Dr. Hopkins' undersigned counsel.<sup>1</sup> In the event this Court requires oral argument in this matter, Dr. Hopkins requests that he be allowed to appear by telephone, as this litigation and its predecessor litigation has already caused him tremendous economic hardship.

Memorandum of Law

Defendant AstraZeneca has served Dr. Hopkins with a Request for Production of Documents (Request), and has served counsel for Dr. Hopkins with a Notice of Subpoena ad Testificandum and Duces Tecum (Deposition). Put simply, the Request seeks documents reflecting settlement discussions between New Jersey class action counsel (Donald Havilland) and counsel for Dr. Hopkins (the undersigned). The subpoena for the deposition of Dr. Hopkins' counsel seeks essentially the same information. Based upon discussions between the undersigned and counsel for AstraZeneca, the document request and depositions are designed to establish that Dr. Hopkins was fraudulently joined as a defendant in a New Jersey Superior Court action (which was removed from the New Jersey state court to New Jersey federal court and then transferred to this MDL Court).

<sup>1</sup> The undersigned has not been admitted *pro hac vice* in this litigation, but understands this Court has entered an order permitting all counsel hailed involuntarily into this MDL to appear *pro hac vice*.

Both the Request, as well as the Deposition, should be quashed. First, the Request as well as the Deposition seek to have counsel produce evidence of settlement communications with Plaintiffs' counsel. To the extent such communications occurred, they are protected by Fed. R. Evid. 408 (Compromise and Offers to Compromise). Moreover, the Deposition seeks to inquire into why the undersigned declined to consent to removal. This will necessarily require disclosure of attorney thought processes and mental impressions (work product privilege) and conversations between Dr. Hopkins and his counsel (attorney client privilege).<sup>2</sup>

To the extent counsel for AstraZeneca seeks to elicit information concerning when Dr. Hopkins was served, that information is clearly set forth in Dr. Hopkins's Joinder in Plaintiffs' Motion for Remand (Exhibit 1). The facts relevant to that inquiry are as follows: Counsel for Dr. Hopkins had agreed to accept service of the New Jersey Class Action Complaint on July 3, 2003. Counsel for Dr. Hopkins did not consent to removal to federal district court on that date or any other date. The only notes in counsel's possession reflecting any conversation with counsel for AstraZeneca are notes of a telephone conversation with Eric Gill of Davis Polk, dated July 3, 2003, the date the undersigned agreed to accept service. Those notes are sketchy, but reflect that Mr. Gill informed the undersigned that the New Jersey State Court lawsuit in which Dr. Hopkins had been named was part of a larger MDL in Boston (this case), that AstraZeneca was involved in ongoing settlement negotiations with Plaintiffs in the MDL, and asking the undersigned whether Dr. Hopkins had properly been served. Those notes reflect no discussion whatsoever concerning removal or the consent for the same. Although undersigned has no independent recollection of that July 3, 2003, conversation, undersigned counsel does know neither Dr. Hopkins nor the undersigned ever consented to removal to federal court.

#### Conclusion

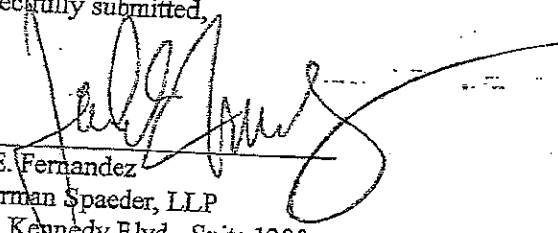
<sup>2</sup> If AstraZeneca contends Dr. Hopkins was joined by the Plaintiffs for the purpose of defeating the federal court's diversity jurisdiction, the Court should be aware that Dr. Hopkins is a Florida resident who was named in a New Jersey state court action by New Jersey plaintiffs. If anything, Dr. Hopkins created a diversity problem for the New Jersey plaintiffs.

Dr. Hopkins' association with AstraZeneca has presented severe financial hardship to Dr. Hopkins. Dr. Hopkins has already been deposed in this case. The current document request and subpoena are not only irrelevant, they seek privileged information. Moreover, any information relevant to AstraZeneca's opposition to remand is set forth in this motion to Quash and in Exhibit 1. Requiring counsel for Dr. Hopkins to attend a deposition simply to repeat those facts is an unnecessary and abusive waste of resources. The Motion to Quash should be granted.

Dr. Hopkins requests any necessary hearing on this issue be conducted telephonically.

Dated: September 27, 2005

Respectfully submitted,



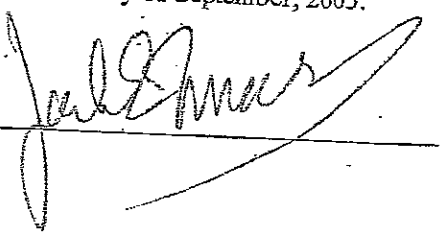
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**CERTIFICATE OF SERVICE**

I hereby certify that a complete and accurate copy of the foregoing has been furnished by U.S.

Mail to all counsel of record on the attached counsel list this 27th day of September, 2005.



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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

International Union of Operating Engineers,  
Local No. 68 Welfare Fund,

Plaintiff,

v.

AstraZeneca PLC; AstraZeneca Pharmaceuticals LP;  
AstraZeneca LP; Zeneca, Inc.; TAP Pharmaceutical Products,  
Inc.; Abbott Laboratories; Takeda Chemical Industries, Ltd.;  
Bayer AG; Bayer Corporation; Miles Laboratories, Inc.; Cutter  
Laboratories, Inc.; GlaxoSmithKline, P.L.C.; SmithKline  
Beecham Corporation; Glaxo Wellcome, Inc.; Pharmacia  
Corporation; Pharmacia & Upjohn, Inc.; Monsanto Company;  
G.D. Searle Company; Sanofi-Synthelabo Inc.; Johnson &  
Johnson; Alza Corporation; Centocor, Inc.; Ortho Biotech, Inc.;  
Alpha Therapeutic Corporation; Hoffman La-Roche Inc.;  
Amgen, Inc.; Immunex Corporation; Aventis Pharmaceuticals,  
Inc.; Aventis Behring L.L.C.; Hoechst Marion Roussel, Inc.;  
Centeon, L.L.C.; Armour Pharmaceuticals; Baxter International  
Inc.; Baxter Healthcare Corporation; Immuno-U.S., Inc.;  
Boehringer Ingelheim Corporation; Ben Venue Laboratories,  
Inc.; Bedford Laboratories; Roxane Laboratories, Inc.; Bristol-  
Myers Squibb Company; Oncology Therapeutics Network  
Corporation; Apothecon, Inc.; Dey, Inc.; Fujisawa  
Pharmaceutical Co., Ltd.; Fujisawa Healthcare, Inc.; Fujisawa  
USA, Inc.; Novartis International AG; Novartis Pharmaceutical  
Corporation; Sandoz Pharmaceutical Corporation; Schering-  
Plough Corporation; Warrick Pharmaceuticals Corporation;

C.A. NO. 03-3230 (SRC)

JOINDER OF DEFENDANT  
STANLEY C. HOPKINS,  
M.D., IN PLAINTIFF'S  
MOTION FOR REMAND,  
OR, IN THE  
ALTERNATIVE, MOTION  
TO REMAND PURSUANT  
TO 28 U.S.C. § 1448



Sicor, Inc.; Gensia Sicor Pharmaceuticals, Inc.; Wyeth; Wyeth Pharmaceuticals; Saad Antoun, M.D.; Stanley C. Hopkins, M.D.; Robert A. Berkman, M.D.; Docs 1-50; ABC Corp. 1-50; and XYZ Partnerships; and Associations 1-50,

Defendants.

**JOINDER OF DEFENDANT STANLEY C. HOPKINS, M.D., IN  
PLAINTIFF'S MOTION FOR REMAND, OR, IN THE ALTERNATIVE,  
MOTION TO REMAND PURSUANT TO 28 U.S.C. § 1448**

Defendant, Stanley C. Hopkins, M.D., by and through his undersigned counsel, hereby joins in the Plaintiff's Motion for Remand, or, in the alternative, moves this Honorable Court to remand this case to state court pursuant to 28 U.S.C. § 1448, and in support thereof avers as follows:

1. This Court's next motion day is September 2, 2003.
2. The Class Action Complaint in the instant case was filed on June 30, 2003, in the Superior Court of New Jersey, Monmouth County.
3. The undersigned accepted service of the Class Action Complaint on behalf of his client, defendant, Stanley C. Hopkins, M.D., on July 3, 2003.
4. Co-defendant, AstraZeneca Pharmaceuticals, L.P. ("AstraZeneca"), removed this action to this Court by filing a Notice of Removal on July 3, 2003.
5. On July 9, 2003, plaintiff filed a Motion for Remand, which was based, in part, upon the lack of consent by Dr. Hopkins.
6. Dr. Hopkins has not provided his consent to removal, although his consent was sought by counsel for AstraZeneca.
7. The undersigned clearly verbally communicated Dr. Hopkins' denial of consent to federal court jurisdiction to counsel for AstraZeneca, and to counsel for plaintiff.

8. In view of Dr. Hopkins' lack of consent to federal court jurisdiction over this matter, the plaintiff's Motion for Remand should be granted.

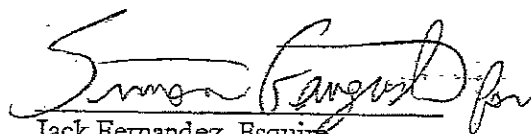
9. In the alternative, should this Court deny the plaintiff's Motion for Remand, despite the lack of consent of Dr. Hopkins to federal court jurisdiction, Dr. Hopkins hereby seeks to have this case remanded pursuant to 28 U.S.C. § 1448 for the same reason.

10. Since defendant Stanley C. Hopkins, M.D., hereby joins in plaintiff's Motion for Remand and brief in support thereof, the filing of a separate brief in support of defendant's notice of joinder and, in the alternative, motion to remand, is unnecessary in this instance.

WHEREFORE, defendant, Stanley C. Hopkins, M.D., hereby joins in the plaintiff's Motion for Remand and respectfully requests that this Honorable Court remand the case to the Superior Court of New Jersey, Monmouth County, either on the basis of plaintiff's Motion for Remand or upon his own motion.

Respectfully submitted,

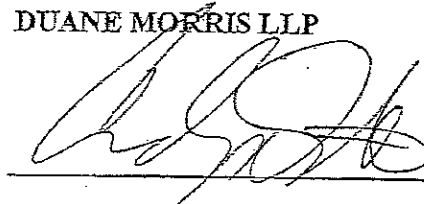
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been furnished to all counsel of record on the attached service list by telex this 4<sup>th</sup> day of August, 2003.

  
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